

MF 98-4

Tax Type: MOTOR FUEL TAX

Issue: Motor Fuel Distributor - 5 Day Revocation

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 98-ST-
v.)	License #
)	
XYZ OIL CORPORATION)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Charles Hickman, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; JOHN DOE and JANE DOE as representatives of XYZ Oil Corporation

Synopsis:

The Department of Revenue ("Department") issued a Notice of License Revocation ("Notice") to XYZ Oil Corporation ("taxpayer"). The Notice states that the taxpayer's distributor and receiver licenses will be revoked pursuant to section 16 of the Motor Fuel Tax Act (35 ILCS 505/1 *et seq.*) because the taxpayer failed to file various returns and pay certain taxes. The taxpayer timely protested the Notice. An evidentiary hearing was held on July 24, 1998 during which the Department admitted that the taxpayer has filed the returns and has entered into an installment contract with the

Department to pay the outstanding tax liability. For the following reasons, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. On February 10, 1998, the Department issued a Notice of License Revocation to the taxpayer. The Notice states that the Department intends to revoke the taxpayer's distributor and receiver licenses. (Dept. Ex. #1)

2. The Notice states that the Department is revoking the licenses because the taxpayer failed to file Form RMFT-5, Motor Fuel Distributor/Supplier Tax Return, and Form RMFT-5-US, Underground Storage Tank Tax and Environmental Impact Fee Receiver Return for the following months: August, September, October, November, and December of 1997. In addition, the taxpayer failed to pay a final assessment totaling \$26,625.69. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)

3. The taxpayer has filed the returns that are listed on the Notice and reduced the balance owed to \$15,590.67. The taxpayer entered into an installment contract with the Department to pay the remaining balance. The contract states that the taxpayer's failure to keep the agreement can result in the revocation of its licenses. (Taxpayer Ex. #1; Tr. pp. 10-11)

4. The taxpayer has made timely payments to the Department under the installment contract and is current on its payments. (Tr. pp. 14-15)

CONCLUSIONS OF LAW:

The Notice issued by the Department states that the taxpayer's distributor and receiver licenses will be revoked pursuant to section 16 of the Motor Fuel Tax Act (Act), which provides in relevant part as follows:

"The Department may, after 5 days' notice, revoke the distributor's, receiver's, supplier's or bulk user's license or permit of any person * * * who violates any provision of this Act or any rule or regulation promulgated by the Department under Section 14 of this Act." (35 ILCS 505/16).

Section 21 of the Act incorporates by reference sections 4 and 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provide that the Department's determination is *prima facie* correct. 35 ILCS 505/21; 120/4, 5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove that the Department's determination is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the Notice was admitted into evidence. As previously stated, the Notice indicates that the Department is seeking to revoke the taxpayer's licenses because the taxpayer failed to file various returns and pay certain taxes. The Department has admitted, however, that the taxpayer has filed all of the returns listed on the Notice. Also, the Department has entered into an agreement with the taxpayer for the payment of the remaining taxes that are due. The taxpayer has made timely payments under the agreement and is not currently in violation of the Act. Therefore, the taxpayer has overcome the Department's *prima facie* case.

Although the taxpayer filed the returns, entered into an agreement to pay the taxes, and is current on its payment plan obligations, the Department contends that the taxpayer's licenses should be revoked because the taxpayer has a history late payments and filings.

The Department's position is inconsistent and breaches the installment contract. The Department entered into an agreement to allow the taxpayer to keep its licenses if it makes payments on a monthly basis. Now the Department wants to revoke the licenses in violation of the agreement. By entering into the installment contract, the Department has waived any right to pursue this method of correcting the taxpayer's past payment problems. (See 20 ILCS 2520/4(d)(1996))

It is therefore recommended that the Notice of License Revocation be dismissed.

Linda Olivero
Administrative Law Judge

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